

December 14, 2007

**MEMORANDUM TO:** David M. Spooner  
Assistant Secretary  
for Import Administration

**FROM:** Stephen J. Claeys  
Deputy Assistant Secretary  
for Import Administration

**SUBJECT:** Issues and Decision Memorandum for the 2004 - 2006  
Administrative Review of Chlorinated Isocyanurates from the  
People's Republic of China

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**SUMMARY:**

We have analyzed the case and rebuttal briefs of interested parties in the antidumping duty administrative review of chlorinated isocyanurates from the People's Republic of China. The period of review is June 16, 2004, through May 31, 2006. As a result of our analysis, we have made changes, including corrections of certain inadvertent programming and clerical errors, in the margin calculations. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues for which we received comments and rebuttal comments by the parties:

**Surrogate Values**

- Comment 1: Surrogate Value for Urea
- Comment 2: Surrogate Value for Sodium Chloride (Salt)
- Comment 3: Surrogate Value for Ferric Trichloride
- Comment 4: Surrogate Value for Water
- Comment 5: Surrogate Value for Desiccant
- Comment 6: Surrogate Value for Electricity
- Comment 7: Surrogate Value for Steam Coal
- Comment 8: Surrogate Value for International Ocean Freight
- Comment 9: Surrogate Values from *Chemical Weekly*

### **Financial Ratios**

- Comment 10: Eligibility of DCM as Source for Surrogate Financial Ratios
- Comment 11: DCM's Expenses for Traded Goods in the Financial Ratio Calculation
- Comment 12: Applying Income Offsets in Calculating Financial Ratios
- Comment 13: Changes in Stock for DCM and Kanoria's Cost of Materials Calculations
- Comment 14: Use of Net Cost in Financial Ratio Calculations

### **By-Products**

- Comment 15: Intermediate Input By-Product Offsets for Chlorine Gas, Hydrogen Gas, Sulfuric Acid and Ammonia Gas
  - A. Chlorine Gas
  - B. Hydrogen Gas
  - C. Waste Sulfuric Acid
  - D. Ammonia Gas

### **Other Issues**

- Comment 16: Inclusion of Reimbursement for Certain Materials in U.S. Price
- Comment 17: Correct Treatment of a Raw Material not Provided Free of Charge
- Comment 18: Zeroing Methodology

## **LIST OF ABBREVIATIONS AND ACRONYMS**

The Act	Tariff Act of 1930, as amended
AUV	Average Unit Value
CAFC	Court of Appeals for the Federal Circuit
CEA	Central Electricity Authority of India
CIL	Coal India Limited
CIT	Court of International Trade
DCM	DCM Shriram Consolidated Limited
FOB	Free on Board
FOP	Factors of Production
IEA	International Energy Agency, Key World Energy Statistics (2003 edition)
IMP	Indian Ministry of Power
ITC	International Trade Commission
Kanoria	Kanoria Chemicals and Industries Limited
ML&E	Materials, Labor and Energy
POR	Period of Review
PRC	People's Republic of China
SG&A	Selling, General and Administrative Expenses
TERI Data	Tata Energy Research Institute's Energy Data Directory & Yearbook (2003/2004 edition)
UHV	Useful Heat Value
WTA	World Trade Atlas® Online (Indian import statistics)

## **CASES AND LITIGATION CITES**

### **Litigation Cites**

(“*China Nat’l Mach. CIT 2003*”) *China Nat’l Mach. Imp. & Exp. Corp. v. United States*, 264 F. Supp. 2d 1229 (Ct. Int’l Trade 2003).

(“*Corus Staal 2005*”) *Corus Staal BV v. Dep’t of Commerce*, 395 F.3d 1343, 1349 (Fed. Cir. 2005), cert denied, 546 U.S. 1089 (2006).

(“*Dorbest CIT 2006*”) *Dorbest, Dorbest Ltd. v. United States*, 462 F. Supp. 2<sup>nd</sup> 1262 (Ct. Int’l Trade 2006).

(“*Hebei Metals CIT 2005*”) *Hebei Metals & Minerals Import & Export Corp. & Hebei Wuxin Metals & Minerals Trading Co., Ltd. v. United States*, 366 F. Supp. 2d 1264 (Ct. Int’l Trade March 10, 2005).

(“*Koyo Seiko 2004*”) *Koyo Seiko Co. v. United States*, 543 U.S. 976 (2004).

(“*Rhodia, CIT 2001*”) *Rhodia, Inc. v. United States*, 185 F. Supp. 2d 1343 (Ct. Int’l Trade 2001).

(“*Shanghai Foreign Trade CIT 2004*”) *Shanghai Foreign Trade Enters. Co. v. United States*, 318 F. Supp. 2d 1339 (Ct. Int’l Trade 2004).

(“*Timken 2004*”) *Timken Co. v. United States*, 354 F.3d 1334, 1341- 42 (Fed. Cir. 2004).

(“*Wuhan Bee CIT 2005*”) *Wuhan Bee Healthy Co., Ltd. v. United States*, 27 Int’l Rep. (BNA) 2382 (Ct. Int’l Trade 2005).

(“*Yantai Oriental Juice CIT 2002*”) *Yantai Oriental Juice Co., et.al. v. United States*, 26 C.I.T. 605 (Ct. Int’l Trade 2002).

### **ITC Administrative Determinations and Rulings**

(“*Rock Salt from Canada ITC March 1985*”) *Rock Salt From Canada*, Determination of the International Trade Commission in Investigation No. 731-TA-239 (Preliminary) USITC Publication 1658 (March 1985).

(“*Rock Salt from Canada ITC January 1986*”) *Rock Salt From Canada*, Determination of the International Trade Commission in Investigation No. 731-TA-239 (Final) USITC Publication 1798 (January 1986).

## **World Trade Organization Reports**

*("U.S.-Zeroing (EC)") Report of the Appellate Body on the Complaint of the European Union Communities Concerning United States - Laws, Regulations, and Methodology for Calculating Dumping Margins, WT/DS294/AB/R (May 9, 2006).*

*("U.S.- Zeroing (Japan)") Report of the Appellate Body on the Complaint of Japan Concerning the United States - Measures Related to Zeroing and Sunset Reviews, WT/DS322/AB/R, (January 23, 2007).*

## **Department's Administrative Determinations and Rulings**

*("Barium Carbonate 8/6/2003") Notice of Final Determination of Sales at Less Than Fair Value: Barium Carbonate from the People's Republic of China, 68 FR 46577 (August 6, 2003), and accompanying Issues and Decision Memorandum.*

*("Brake Rotors 8/2/2007") Brake Rotors from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews and Partial Rescission of the 2005-2006 Administrative Review, 72 FR 42386 (August 2, 2007), and accompanying Issues and Decision Memorandum.*

*("CVP 23 5/10/2007") Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 72 FR 26589 (May 10, 2007), and accompanying Issues and Decision Memorandum.*

*("Carbon and Alloy Steel Wire Rod 8/30/2002") Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Ukraine, 67 FR 55785 (August 30, 2002), and accompanying Issues and Decision Memorandum.*

*("Cased Pencils 5/14/2007") Certain Cased Pencils from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 72 FR 27074 (May 14, 2007), and accompanying Issues and Decision Memorandum.*

*("Coated Free Sheet Paper 10/25/2007") Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China, 72 FR 60632 (October 25, 2007), and accompanying Issues and Decision Memorandum.*

*("Chlorinated Isos 5/10/2005") Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China, 70 FR 24502 (May 10, 2005), and accompanying Issues and Decision Memorandum.*

*("Diamond Sawblades 5/22/2006") Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China, FR 71 29303 (May 22, 2006).*

*(“DOC Zeroing”) See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722, 77725 (December 27, 2006).*

*(“Fence Posts 6/14/2007”) Notice of Amended Final Determination of Sales at Less than Fair Value and Antidumping Duty Order Pursuant to Court Decision: Lawn and Garden Steel Fence Posts from the People’s Republic of China, 72 FR 32835 (June 14, 2007).*

*(“Garlic 5/4/2006”) Fresh Garlic from the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews, 71 FR 26329 (May 4, 2006), and accompanying Issues and Decision Memorandum.*

*(“Garlic 6/22/2007”) Fresh Garlic from the People’s Republic of China: Final Results and Partial Rescission of the Eleventh Administrative Review and New Shipper Review 72 FR 34438 (June 22, 2007), and accompanying Issues and Decision Memorandum.*

*(“Hand Trucks 5/15/2007”) Hand Trucks and Certain Parts Thereof From the People’s Republic of China: Final Results of Administrative Review and Final Results of New Shipper Review, 72 FR 27287 (May 15, 2007), and accompanying Issues and Decision Memorandum.*

*(“Honey 6/16/2006”) Honey from the People’s Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review, 71 FR 34893 (June 16, 2006), and accompanying Issues and Decision Memorandum.*

*(“Hot-Rolled Steel from Romania 6/14/2005”) Certain Hot-Rolled Carbon Steel Flat Products From Romania: Final Results of Antidumping Duty Administrative Review, 70 FR 34448 (June 14, 2005), and accompanying Issues and Decision Memorandum.*

*(“Ironing Tables 3/21/2007”) Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People’s Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review, 72 FR 13239 (March 21, 2007), and accompanying Issues and Decision Memorandum.*

*(“Lined Paper Products 9/8/2006”) Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative critical Circumstances, In Part: Certain Lined Paper Products from the People’s Republic of China, 71 FR 53079 (September 8, 2006), and accompanying Issues and Decision Memorandum.*

*(“Live Swine from Canada 3/11/2005”) Notice of Final Determination of Sales at Less Than Fair Value: Live Swine from Canada, 70 FR 12181 (March 11, 2005), and accompanying Issues and Decision Memorandum.*

*(“Malleable Iron Pipe Fittings 6/29/2006”) Malleable Iron Pipe Fittings From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 37051 (June 29, 2006), and accompanying Issues and Decision Memorandum.*

("Persulfates 2/14/2006") *Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 7725 (February 14, 2006), and accompanying Issues and Decision Memorandum.

("Polyester Staple Fiber 12/26/2006") *Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 71 FR 77373 (December 26, 2006) (unchanged in Final).

("Polyester Staple Fiber 4/19/2007") *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China* 72 FR 19690 (April 19, 2007), and accompanying Issues and Decision Memorandum.

("Poly Retail Bags 3/19/2007") *Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 72 FR 12762 (March 19, 2007), and accompanying Issues and Decision Memorandum.

("Polyvinyl Alcohol 8/11/2003") *Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China*, 68 FR 47538 (August 11, 2003), and accompanying Issues and Decision Memorandum.

("Preserved Mushrooms 7/11/2003") *Certain Preserved Mushrooms from the People's Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 68 FR 41304 (July 11, 2003), and accompanying Issues and Decision Memorandum.

("Preserved Mushrooms 7/17/2006") *Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006), and accompanying Issues and Decision Memorandum.

("Preserved Mushrooms 8/9/2007") *Certain Preserved Mushrooms from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 72 FR 44827 (August 9, 2007), and accompanying Issues and Decision Memorandum.

("Saccharin 9/11/2007") *Saccharin from the People's Republic of China: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 51800 (September 11, 2007), and accompanying Issues and Decision Memorandum.

("Shrimp 7/16/2004") *Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672 (July 16, 2004).

("Softwood Lumber 12/12/2005") *Notice of Final Results of Antidumping Duty Administrative Review: Certain Softwood Lumber Products From Canada*, 70 FR 73437 (December 12, 2005), and accompanying Issues and Decision Memorandum.

("Tables and Chairs 7/19/2006") *Folding Metal Tables and Chairs from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 38852 (July 10, 2006).

("Tables and Chairs 12/11/2006") *Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 71509 (December 11, 2006).

("Tapered Roller Bearings 12/19/2006") *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2004-2005 Administrative Review and Partial Rescission of Review* 71 FR 75936 (December 19, 2006), and accompanying Issues and Decision Memorandum

("Tetrahydrofurfuryl Alcohol 1/27/2004") *Notice of Preliminary Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol from the People's Republic of China*, 69 FR 3887 (January 27, 2004).

("Tetrahydrofurfuryl Alcohol 6/18/2004") *Notice of Final Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol From the People's Republic of China*, 69 FR 34130 (June 18, 2004).

("Urea from Russia 3/3/2003") *Notice of Final Determination of sales at Less Than Fair Value: Urea Ammonium Nitrate Solutions from the Russian Federation*, 68 FR 9977 (March 3, 2003), and accompanying Issues and Decision Memorandum.

("Wooden Bedroom Furniture 12/06/2006") *Wooden Bedroom Furniture From the People's Republic of China: Final Results of the 2004-2005 Semi-Annual New Shipper Review*, 71 FR 70739 (December 6, 2006), and accompanying Issues and Decision Memorandum.

("Wooden Bedroom Furniture Remand Redetermination 5/25/2007") *Final Results of Redetermination Pursuant to Court Remand, Dorbest Limited, et al. v. United States*, 462 F. Supp. 2d 1262 Ct. Int'l Trade 2006).

("Wooden Bedroom Furniture 8/22/2007") *Amended Final Results of Antidumping Duty Administrative Review and New Shipper Reviews: Wooden Bedroom Furniture From the People's Republic of China*, 72 FR 46957 (August 22, 2007), and accompanying Issues and Decision Memorandum.

## BACKGROUND

On July 17, 2007, the Department of Commerce (“the Department”) published its preliminary results of review. *See Chlorinated Isocyanurates from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 39053 (July 17, 2007) (“*Preliminary Results*”). On September 7, 2007, Clearon Corporation and Occidental Chemical Corporation (“Petitioners”),<sup>1</sup> BioLab, Inc. (“BioLab”),<sup>2</sup> a domestic interested party, and Jiheng Chemical Company Ltd. (“Jiheng Chemical”),<sup>3</sup> the respondent, filed case briefs. On September 13, 2007, Petitioners<sup>4</sup> and BioLab<sup>5</sup> filed rebuttal briefs. Jiheng Chemical filed a rebuttal brief on September 14, 2007.<sup>6</sup> On September 27, 2007, the Department held public and closed hearings. On October 24, 2007, Department officials met with counsel for Petitioners. On November 1, 2007, Department officials met with counsel for Jiheng Chemical. On November 13, 2007, Department officials met with counsel for BioLab. On November 14, 2007, the Department extended the time period for completion of the final results until December 14, 2007.<sup>7</sup>

## DISCUSSION OF THE ISSUES:

### I. General Issues

#### Comment 1: Surrogate Value for Urea

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<sup>1</sup> *See Chlorinated Isocyanurates from Spain (A typo, should be China) (First Administrative Review): Case Brief of Petitioners Clearon Corporation and Occidental Chemical Corporation submitted on September 7, 2007 (“Petitioners’ September 7, 2007 Case Brief”).*

<sup>2</sup> *See Chlorinated Isocyanurates from China; 2004-2006 Administrative Review; Case Brief of BioLab, Inc. submitted on September 7, 2007 (“BioLab’s September 7, 2007 Case Brief”).*

<sup>3</sup> *See Chlorinated Isocyanurates from the People’s Republic of China: Case Brief submitted by Hebei Jiheng Chemical Company, Ltd. on September 7, 2007 (“Jiheng Chemical’s September 7, 2007 Case Brief”).*

<sup>4</sup> *See Chlorinated Isocyanurates from the People’s Republic of China (First Administrative Review): Rebuttal Brief of Petitioners Clearon Corporation and Occidental Chemical Corporation submitted on September 13, 2007 (“Petitioners’ September 13, 2007 Rebuttal Brief”).*

<sup>5</sup> *See Chlorinated Isocyanurates from China; 2004-2006 Administrative Review; Rebuttal Brief of BioLab, Inc. submitted on September 13, 2007 (“BioLab’s September 13, 2007 Rebuttal Brief”).*

<sup>6</sup> *See Chlorinated Isocyanurates from the People’s Republic of China: Rebuttal Brief submitted by Hebei Jiheng Chemical Company, Ltd. on September 14, 2007 (“Jiheng Chemical’s September 14, 2007 Rebuttal Brief”).*

<sup>7</sup> *See Chlorinated Isocyanurates from the People’s Republic of China: Notice of Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review*, 72 FR 65563 (November 21, 2007).



Petitioners argue that the WTA Indian import data used to value urea in the preliminary results should not be used in the final results because they do not represent urea prices available to producers in India as Indian producers do not have the option of importing urea. According to Petitioners, a report prepared by the Ministry of Chemicals & Fertilizers (“Report of Indian Department of Fertilizers 5/15/2007”) states that “{i}mport of urea is restricted and permitted through State Trading Enterprises. Import of urea, for direct use as fertilizers, is being made only on Government Account.”<sup>8</sup> Petitioners assert that there are only two State Trading Companies identified “for import of urea and imported urea is handled by agencies appointed by the Government of India every year on a contractual basis.”<sup>9</sup> Petitioners claim that the restrictions on urea imports into India are part of a comprehensive system of government control over the Indian market for urea. Petitioners maintain that while price controls have been eliminated for other fertilizers, urea remains “the only fertilizer left under statutory price and movement control of the Government.”<sup>10</sup>

Alternatively, Petitioners contend that if the Department continues to use Indian import statistics in the final results, the Department should exclude the imports from Oman because all of the urea imported into India from Oman are from the Oman India Fertilizer Company (“OMIFCO”), which was established as “the result of an initiative by the Governments of Oman and India.”<sup>11</sup> Petitioners contend that the Governments of Oman and India jointly control OMIFCO, in which the Government of Oman holds a 50-percent interest through the Oman Oil Company – a 100-percent closed joint-stock company owned by the Government of Oman<sup>12</sup> – and the remaining 50-percent interest is held by two Indian agricultural co-ops in which the Indian government holds majority ownership.<sup>13</sup> Furthermore, Petitioners maintain that the entire output of OMIFCO has been committed to purchase by the Indian government under a 15-year declining fixed-price

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<sup>8</sup> See the *Report of Indian Department of Fertilizers 5/15/2007* contained in Chlorinated Isocyanurates from China (First Administrative Review): Additional Information Regarding Surrogate values for Factors of Production submitted by Petitioners on August 6, 2007 (“Petitioners’ August 6, 2007 surrogate value submission”) at 62 in Exhibit 1.

<sup>9</sup> See the *Report of Indian Department of Fertilizers 5/15/2007* contained in Petitioners’ August 6, 2007 surrogate value submission at 12 in Exhibit 1.

<sup>10</sup> *Id.*

<sup>11</sup> See *Oman India Fertiliser Company* contained in Chlorinated Isocyanurates from the People’s Republic of China (First Administrative Review): Rebuttal Comments on Surrogate Values for Factors of Production submitted by Petitioners on December 6, 2006 (“Petitioners’ December 6, 2006 Surrogate Value Filing”) at 1 in Exhibit 1.

<sup>12</sup> See *Oman Economic Review* contained in Petitioners’ December 6, 2006 Surrogate Value Filing at 1 in Exhibit 2.

<sup>13</sup> See *Oman India Fertiliser Company* contained in Petitioners’ December 6, 2006 Surrogate Value Filing at 2 in Exhibit 1.

contract.<sup>14</sup> Citing the May 15, 2007 Report of Indian Department of Fertilizers, Petitioners state that the Indian government openly acknowledges that its imports from OMIFCO are "cheaper than the open market imports."<sup>15</sup> Petitioners conclude that the urea imports from Oman to India reflect a special government-to-government deal that has no relationship to what a purchaser in a market economy would have paid for urea.

Petitioners maintain that the Department has rejected potential surrogate data in prior cases where government involvement has restricted market forces. Petitioners state that the petitioner in *Urea from Russia* 3/3/2003 argued that a natural gas price fixed by the Egyptian government proposed by the respondent was "isolated from the effects of supply and demand that have caused natural gas prices to fluctuate over time . . ." and the Department agreed with the petitioner that the natural gas price established by the Egyptian government was "not a price determined by market forces." Citing to *Urea from Russia* 3/3/2003 at Comment 1. Also, Petitioners state that the CIT noted the apparent "distortions" from the subsidy program for juice apples and found that the record did not support use of the Indian juice apple values as a "market derived price." Citing to *Yantai Oriental Juice* CIT at 18.

Petitioners propose that the Department value urea using domestic price data contained in an article published in a monthly magazine by the University of Asia and the Pacific in Philippines. Petitioners argue that the Philippine domestic data are not affected by governmental intervention and are fully contemporaneous with the POR. Petitioners state that the source for these data is Fertilizer and Pesticide Authority, a government agency which routinely collects and publishes retail pricing data on fertilizers and pesticide.<sup>16</sup>

Petitioners find fault with the Department's decision in the preliminary results to include in the WTA Indian import data imports from Oman based on a comparison with other potential surrogate countries (Indonesia, Sri Lanka, and the Philippines). Petitioners state that the elimination of the Oman import data is comparable to the Department's practice of eliminating from the import data non-market-economy countries and countries that are known to grant broadly available export subsidies. Also, Petitioners contend that the relevant comparison, if any, should be between the values of urea imports from Oman against other Indian import data, and argue that the price for Oman imports is substantially lower than all other sources of urea imports into India. Additionally, Petitioners contend that the WTA import data for Indonesia are not reliable because almost all of the imports of urea into Indonesia are reported to be from

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<sup>14</sup> *Id.*

<sup>15</sup> See the Report of Indian Department of Fertilizers 5/15/2007 contained in Petitioners' August 6, 2007 surrogate value submission at 36 in Exhibit 1.

<sup>16</sup> Petitioners cite the May 2006 issue of *Food and Agri Business Monitor*, a monthly magazine of the Center for Food and Agri Business, University of Asia and the Pacific, Philippines, downloaded from Agriculture and Agri-Food Canada website on July 26, 2007, contained in Petitioners' August 6, 2007 surrogate value submission at Exhibit 4.

Japan, and Japanese official statistics report no exports of urea to Indonesia during the POR. Also, Petitioners argue that the WTA import data for the Philippines are reported on an FOB basis; consequently, the price does not include any international transportation costs. Furthermore, Petitioners argue that the WTA import data for Sri Lanka are comparable to the value of Indian imports from countries other than Oman.

BioLab also contends that the Department should exclude imports from Oman from the calculation of the surrogate value for urea because the record demonstrates that the prices for Indian imports of urea from Oman are the result of government involvement and do not constitute an appropriate market-based surrogate value for urea.

Jiheng Chemical disagrees with Petitioners and BioLab and urges the Department to continue to use all WTA Indian import data to calculate the surrogate value for urea in the final results. Jiheng Chemical maintains that the Department's preferred methodology is to base surrogate values on the import prices of one country, citing 19 CFR 531.408(c)(2). Therefore, Jiheng Chemical argues, since India is still the surrogate country for this review as it was during the investigation, the Department should continue to use the WTA Indian import data to value urea for the final results.

Regarding Petitioners' and BioLab's argument that the import price from Oman is not valid because of government involvement, Jiheng Chemical states that the Department must support its decisions with "substantial, specific and objective evidence," citing *China Nat'l. Mach. CIT* 2003. According to Jiheng Chemical, "Footnote 10 of the Court's opinion states that 'sufficient evidence that the prices paid were *market-determined*' (emphasis added by Jiheng Chemical) would satisfy the Department that the prices paid are not distorted and can be used to value factors of production in a non-market economy."<sup>17</sup>

Jiheng Chemical contends that the government involvement with OMIFCO does not necessarily mean that urea imports from Oman are not at valid prices, because the reports provided by Petitioners do not indicate that OMIFCO has received a subsidy from the government. Jiheng Chemical considers that the economies of scale is one factor contributing to OMIFCO's price, given the quantity of imports from Oman into India. In this case, Jiheng Chemical argues that the Department must compare prices to see if they are, in fact, aberrational and should be excluded. Jiheng Chemical states that the Indian overall AUV is comparable with the AUVs in Indonesia, Sri Lanka and the Philippines. Jiheng Chemical states that the AUV of Indian imports is US\$0.20 per kilogram ("kg"), the AUV of Indonesian imports is US\$0.21 per kg, the AUV for Japanese imports to Indonesia is US\$0.20 per kg, the AUV for Philippine's imports is US\$0.20 per kg. Jiheng Chemical maintains that if the Philippine AUV is increased by 14 percent to make up the difference between CIF and FOB import values, the resulting AUV of US\$0.23 per kg is still not significantly different when compared with the Indian AUV. Jiheng Chemical acknowledges that the AUV of US\$0.29 per kg for Sri Lanka is higher than the Indian AUV.

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<sup>17</sup> Jiheng Chemical's September 14, 2007 Rebuttal Brief at 4.

However, Jiheng Chemical contends that the difference does not reach the magnitude of difference that the Department could conclude that the Indian AUV is aberrational.

Jiheng Chemical argues that the Department should not use the Philippine domestic price for urea proposed by Petitioners because the price is for agricultural urea, sold at the retail level to farmers for fertilizer.<sup>18</sup> Jiheng Chemical argues that such a transaction bears no relation in its conditions of trade to the conditions of trade for the vast quantity of urea purchased in bulk for use as a feedstock in Jiheng Chemical's chemical production. Also, Jiheng Chemical contends that, since fertilizer urea is sold at a retail price, it is presumably tax inclusive. Additionally, Jiheng Chemical argues that, because the Philippine domestic price of US\$0.35 is far different from the import prices in all four potential surrogate countries, it does not constitute the best available information with which to value inputs of urea.

### **Department's Position**

The Department has a well-established practice for determining the reliability and appropriateness of surrogate values under consideration. With respect to surrogate value selection, "it is the Department's stated practice to use investigation or review period-wide price averages, prices specific to the input in question, prices that are net of taxes and import duties, prices that are contemporaneous with the period of investigation or review, and publicly available data." See NME Surrogate Selection Policy Bulletin (<http://ia.ita.doc.gov/policy/index.html>), at page 4 of the website version. With that in mind, the Department first attempts to find publicly available, contemporaneous and non-aberrational surrogate values for all FOPs from the primary surrogate country, in keeping with the Department's aim of valuing all factors in a single surrogate country.<sup>19</sup> In this case, we selected India as our primary surrogate country. Thus, the Department's first preference in selecting surrogate value data for the instant review is public Indian data from the POR.

In *Hot-Rolled Steel from Romania* 6/14/2005, the Department addressed the issue of testing surrogate values alleged to be aberrational. In so doing, the Department acknowledged inconsistencies in its past practice, and articulated a hierarchy for testing surrogate values alleged to be aberrational: "To test the reliability of the surrogate values alleged to be aberrational, we compared the selected surrogate value for each FOP to the AUVs calculated for the same period using data from the other surrogate countries the Department designated for this review, to the extent that such data are available."<sup>20</sup>

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<sup>18</sup> See *The Philippine Fertilizer Industry* contained in Petitioners' August 6, 2007 surrogate value submission at 6 in Exhibit 4.

<sup>19</sup> See 19 CFR 351.408(c)(2).

<sup>20</sup> See *Hot-Rolled Steel from Romania* 6/14/2005 at Comment 2.

Applying this same methodology in the instant review, we compared the aggregate Indian import value of urea with that of other potential surrogate countries (Indonesia, Sri Lanka and the Philippines). This also comports with the Department's stated practice that it is "preferable to benchmark selected surrogate values against AUVs derived from the same data source."<sup>21</sup> In other words, we compared WTA import values for all of the potential surrogate countries and found the Indian values to be within the range of the AUVs from the other potential surrogate countries. Specifically, the AUV for Indian imports is \$0.2000 per kilogram, the AUV for the Philippines is \$0.1956 per kilogram, and the AUV for Indonesia is \$0.2004 per kilogram. The AUV for Sri Lanka, at \$0.2862 per kilogram, is the highest value among import statistics. In making this comparison, we recalculated the WTA Indonesian import value to include Japan and to exclude India.<sup>22</sup> With respect to the Philippine domestic prices proposed by Petitioners, we note that those prices are derived from a different data source from the other surrogate values on the record and, therefore, are less comparable for purposes of benchmarking the Indian import values.

With respect to Petitioners' and BioLab's contention that we should exclude Indian imports from Oman, we compared the AUV for imports from Oman with the AUVs of imports from other market-economy countries. Contrary to Petitioners' assertion that the price for imports from Oman is substantially lower than those for all other sources of urea imports into India, we find the AUV for imports from Oman to be within the range of imports from other market-economy countries.<sup>23</sup>

Consistent with the practice articulated in *Hot-Rolled Steel from Romania* 6/14/2005 at Comment 2, and further emphasized in *Lined Paper Products* 9/8/2006,<sup>24</sup> as explained above, we compared WTA Indian imports of urea with WTA data from the other potential surrogate countries. Finding the value for Indian imports to be comparable to the import values of other potential surrogate countries, we have continued to value urea using the WTA Indian import data. Further, we have not excluded imports from Oman because we found this AUV to be within the range of

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<sup>21</sup> *Id.*

<sup>22</sup> See Memorandum to the File: Final Results Surrogate Value Memorandum ("SV Memo") at Attachment II. In calculating WTA Indonesian import data, Petitioners included imports from India but excluded imports from Japan. See Petitioners' August 6, 2007 surrogate value submission at exhibit 5. We included imports from Japan because Japan is a market-economy country; we excluded imports from India because the Department's practice is to exclude imports from countries that have generally available export subsidies (*i.e.*, South Korea, Indonesia, Thailand and India). See, *e.g.*, *Tables and Chairs* 7/10/2006; unchanged in *Tables and Chairs* 12/11/2006.

<sup>23</sup> See SV Memo at Attachment II.

<sup>24</sup> See *Lined Paper Products* 9/8/2006 at Comment 5, explaining that the Department's current practice is "to benchmark surrogate values against imports from the list of potential surrogate countries for a given case."

AUVs for imports from other market-economy countries, and higher than the AUVs of imports from Ukraine<sup>25</sup> and the United Kingdom.

## **Comment 2: Surrogate Value for Sodium Chloride (Salt)**

Petitioners state that Indian import data for sodium chloride are recorded in three separate tariff subheadings: (1) “common salt (including iodized salt), (2) “rock salt”, and (3) “other salts”. Petitioners note that in the preliminary results the Department valued salt input using WTA Indian import data included in HTS subheading 2501.00.20 for “rock salt,” whereas Jiheng Chemical reported using sea salt in its manufacturing of the subject merchandise. Petitioners argue that the WTA tariff category for “other salts” is the only category to include the sea salt used by Jiheng Chemical. According to Petitioners, rock salt is mined from the earth and the production process is different from the production of sea salt. Citing *Rock Salt from Canada* ITC March 1985, Petitioners claim that in the antidumping investigation of rock salt from Canada, the ITC identified rock salt and “two other types of salt – evaporated and solar.” Petitioners state that the ITC specified that rock salt was produced through mining the underground salt. Petitioners claim that the ITC staff report indicates that the basic production process for rock salt begins with underground salt deposits, proceeding through shaft mining, whereas solar salt begins with sea water or surface salt water through solar evaporation. Petitioners also state that the ITC report noted that rock salt is used primarily for road deicing whereas “solar salt is used to a minor degree for highway deicing,” and “{i}ts major uses are in the chemical industry, food processing industry, and in other manufacturing industries.”<sup>26</sup> Alternatively, Petitioners argue that the next-best option is to use the value of vacuum salt from *Chemical Weekly*, because of the similarities in production processes and end uses. Petitioners state that salt may be produced in one of three ways: “solar evaporation (sea salt), rock-salt mining, and solution mining (vacuum salt).”<sup>27</sup> According to Petitioners, the production of solution-mined vacuum salt is similar to the production of sea salt in that both involve producing salt from a concentrated brine solution,<sup>28</sup> and “{w}hile the natural energy of the sun can be used to evaporate sea water in hot countries to get salt, in colder countries, salt is produced by evaporating ‘solution-mined’ brine in pressure vessels,” citing to Kirk-Othmer Encyclopedia of

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<sup>25</sup> We based this calculation on imports from Ukraine for the period beginning February 1, 2006, at which time the Department determined that Ukraine was a market-economy country for purposes of the Department’s antidumping analysis.

<sup>26</sup> See Petitioners’ August 6, 2007 surrogate value submission at Exhibit 9, p. 4, fn 6.

<sup>27</sup> See *Crystallised Salt in Western Europe*, *Science Tribune* October 1996 at 1, contained in Petitioners’ December 6, 2006 Surrogate Value Filing at Exhibit 7.

<sup>28</sup> See Petitioners’ September 7, 2007 Case Brief at 26.

Chemical Technology.<sup>29</sup> Petitioners claim that vacuum salt refers to the dry salt produced from evaporating solution-mined brine, just as sea salt is produced from evaporating increasingly concentrated sea water brine, and is specifically used for the production of chlorine and caustic soda, the products produced by Jiheng Chemical using sodium chloride.

BioLab also urges the Department to use the WTA Indian import data contained in the tariff subheading for “other salts.” BioLab states that the Department based its rationale for using the tariff subheading for “rock salt” on its own research, which indicates that rock salt is typically formed by the evaporation of salty water (such as sea water), and that this is similar to the sea salt Jiheng Chemical reported using. BioLab argues, however, that rock salt involves simply digging the material out of underground deposits and crushing, screening and bagging it, whereas sea salt involves purification steps through evaporation processes. As a result, BioLab argues, there are clear differences between sea salt and rock salt in terms of the production process.

Jiheng Chemical argues that in terms of end uses, physical characteristics, and the level of processing, rock salt is the most similar product to the industrial grade sea salt that it uses in its chlor alkali plant. Jiheng Chemical contends that in China raw salt includes rock salt and sea salt, and both kinds of salts are used in the chlor alkali industry. Also, Jiheng Chemical argues that Petitioners' proposed vacuum salts are highly refined products produced through evaporators, and include edible salts.

Jiheng Chemical argues that the WTA Indian Import tariff category for “other salts” is a basket category and the Department’s established preference is to avoid basket categories when “a more representative alternate surrogate is available,” citing *Dorbest* CIT 2006 at 43, and that the Department “does not prefer an overly broad HTS category where a more product-specific surrogate value is available,” citing *Preserved Mushrooms* 8/9/2007 at Comment 2. Jiheng Chemical notes that in *Preserved Mushrooms* 8/9/2007, the Department declined to use *Infodrive India* data to identify and value specific imports of products identical to those under review. However, Jiheng Chemical argues that, in the instant review, *Infodrive India* data provide valuable details about the salt that falls into the basket category, and indicates that the basket category contains no imports of industrial sea salt or any sea salt similar to the industrial sea salt that Jiheng Chemical uses.

### **Department’s Position**

In valuing FOPs, section 773(c)(1) of the Act instructs the Department to use “the best available information” from the appropriate market-economy country. The Department considers several factors when choosing the most appropriate surrogate values, including the quality, specificity, and contemporaneity of the data. See *Lined Paper Products* 9/8/2006 at Comment 3. As there is no hierarchy for applying the above-mentioned principles, the Department must weigh available

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<sup>29</sup> See Kirk-Othmer Encyclopedia of Chemical Technology, Vol. 22 at 802, 803, contained in Petitioners’ December 6, 2006 Surrogate Value Filing at Exhibit 9.

information with respect to each input value and make a product-specific and case-specific decision as to what the “best” surrogate value is for each input. *See Preserved Mushrooms* 8/9/2007 at Comment 1.

Petitioners’ and BioLab’s arguments against selecting rock salt as the appropriate surrogate for valuing Jiheng Chemical’s sea salt are primarily based on the description of rock salt production in the ITC’s ruling in *Rock Salt from Canada* ITC March 1985, rather than a definition of rock salt. The imported product that was the subject of that antidumping investigation was rock salt from Canada. The ITC determined that domestically produced rock salt is identical to imported rock salt because both were produced by mining underground salt deposits that had evolved from the evaporation of oceans, and occurred in several basins located in various regions of the United States, Mexico and Canada.<sup>30</sup> Consequently, the rock salt in the antidumping investigation against Canada was narrowly defined as the rock salt mined from the same salt deposits.

With respect to Petitioners’ argument that rock salt is primarily used for road de-icing, the ITC found that in 1983, approximately half of all rock salt shipped domestically in the United States was used for highway de-icing and approximately 20 percent was used in the chemical industry.<sup>31</sup> Clearly, the ITC report identified a significant percentage of rock salt shipped domestically in the United States was for use in the chemical industry. Moreover, the ITC specified that the use of rock salt in the chemical industry is for the manufacture of chlor-alkalis.<sup>32</sup>

The Sodium Chloride Processing Section in the Kirk-Othmer Encyclopedia of Chemical Technology that Petitioners cited describes the processing of sodium chloride. It explains that there are “three production types: solution mining, the dry mining and solar salt harvesting.” It adds that “since all salt deposits originated from either current or ancient seas, all natural salt is a form of seasalt.”<sup>33</sup> Therefore, all of the surrogate values placed on the record of this review represent values for sea salt. Solar salt merely refers to salt formed by solar evaporation. On this point, both Petitioners and Jiheng Chemical agree that solar evaporation relates to sea salt.<sup>34</sup>

The ITC report provides further support for finding that the WTA Indian import value for rock salt is the most appropriate surrogate value for the sea salt used by Jiheng Chemical, and that the

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<sup>30</sup> *See Rock Salt from Canada* ITC March 1985 at 4.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *See* Kirk-Othmer Encyclopedia of Chemical Technology, Vol. 22 at 802 contained in Petitioners’ December 6, 2006 Surrogate Value Filing at Exhibit 9.

<sup>34</sup> *See* “sea salt is formed by solar evaporation of sea water, or briny lake water,” in Jiheng Chemical’s September 7, 2007 Case Brief at 24; *See also*, “the record indicates that salt may be produced in one of three ways: ‘solar evaporation (sea salt),’ in Petitioners’ September 7, 2007 Case Brief at 26.



*Chemical Weekly* value for vacuum salt is not an appropriate surrogate value. Specifically, the ITC report stated that “solar salt has about the same purity and crystal size as rock salt.”<sup>35</sup> Meanwhile, according to the ITC report, “{t}o be sold as food grade, solar salt must be redissolved and the brine processed in vacuum pans.”<sup>36</sup> Accordingly, because vacuum salt represents sea salt that has undergone further processing in order to be sold as food grade, we find that the *Chemical Weekly* value for vacuum salt proposed by Petitioners is not an appropriate surrogate value for the industrial grade salt used by Jiheng Chemical, whereas rock salt, being the same crystal size and purity as sea salt, is an appropriate surrogate value.

Notwithstanding Petitioners’ argument that rock salt is obtained through shaft mining of underground salt deposits, whereas solar salt is obtained through solar evaporation of sea water or surface salt water, the Department’s practice is to select “surrogates that are ‘as similar as possible to the input for which a surrogate value is needed.’”<sup>37</sup> The ITC report’s description of how rock salt is obtained was specifically in the context of the antidumping investigation of rock salt from Canada. Other record evidence – including other evidence contained in the same ITC report, as discussed above – supports a finding that the Indian HTS category for rock salt remains the most appropriate surrogate value for the industrial grade sea salt used by Jiheng Chemical.

Jiheng Chemical explained that it uses “unprocessed, industrial grade sea salt produced when Chinese companies near the sea take sea water from the surrounding area and allow evaporation to take place.”<sup>38</sup> (Essentially, Jiheng Chemical is describing solar salt.) As discussed above, the ITC report stated that “solar salt has about the same purity and crystal size as rock salt.” Furthermore, as we stated in the preliminary results, record evidence shows that rock salt is typically formed by the evaporation of salty water (such as sea water).<sup>39</sup>

The Department “does not prefer an overly broad HTS category where a more product-specific surrogate value is available.”<sup>40</sup> In this particular case, we have no information describing the type of salt included in the basket category. With respect to the “other” salt category, Jiheng

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<sup>35</sup> See *Rock Salt from Canada* ITC March 1985 footnote 6 at 4.

<sup>36</sup> See *Rock Salt from Canada* ITC January 1986 footnote 2 at A-2.

<sup>37</sup> See *Cased Pencils* 5/14/2007 at Comment 1.

<sup>38</sup> See Chlorinated Isocyanurates from the People’s Republic of China: Rebuttal Comments to Petitioners December 6, 2006 Surrogate Value Information submission submitted by Hebei Jiheng Chemical Company, Ltd. on January 5, 2007 (“Jiheng Chemical’s January 5, 2007 Surrogate Value Rebuttal Comments”) at 2.

<sup>39</sup> See *Preliminary Results* at 6, citing Reply to ASK-AN-EARTH-SCIENTIST from Dr. Ken Rubi, Department of Geology and Geophysics at University of Hawaii, at <http://www.soest.hawaii.edu/GG/ASK/rocksalt.html>.

<sup>40</sup> See *Preserved Mushrooms* 8/9/2007 at Comment 2.

Chemical put data from *Infodrive India* on the record, not for consideration as a surrogate value for salt, but to demonstrate that there was no industrial sea salt contained in the *Infodrive India* data, arguing, therefore, that industrial sea salt is not included in the Indian WTA “other” salt category. The total quantity of salt imported into India contained in the *Infodrive India* data under HTS subheading 2501.00.90 is 77 metric tons<sup>41</sup> and the total quantity of imports from the WTA Indian data under the same HTS subheading is 140 metric tons.<sup>42</sup> Although *Infodrive India* data provide more details of the types of salts imported into India, the fact that the total quantity from *Infodrive India* data account for only 55 percent of the quantity of Indian imports which fall under this particular HTS category renders it inadequate for the purpose of demonstrating that there were no Indian imports of industrial sea salt during the POR. Nevertheless, as the Department stated in *CVP 23 5/10/2007*, “it is reasonable to question the reliability of basket categories when the product content is uncertain.”<sup>43</sup> Consequently, after a thorough examination of all of the evidence on the record, as discussed above, we continue to find that the Indian WTA data for rock salt is the best available information with which to value the sodium chloride that Jiheng Chemical uses in manufacturing the subject merchandise.

### **Comment 3: Surrogate Value for Ferric Trichloride**

BioLab states that the Department used for the preliminary results a broad tariff category for “Chlorides” under HTS subheading 2827, and urges that for the final results, the Department use “Chlorides of Iron” under HTS subheading 2827.33.00, which it argues is more specific to the ferric trichloride that Jiheng Chemical uses in its production of subject merchandise. Also, BioLab states that all three interested parties to this review submitted contemporaneous information on this tariff category.

### **Department’s Position**

In the preliminary results, we explained that we declined to use the Indian import data for HTS subheading 2827.33.00 because the entry was crossed out within the other data. Following the preliminary results we contacted the WTA administrator to determine the reason why this HTS category was crossed out. The WTA explained that the strikeout indicated that the HTS subheading was old, but that entries sometimes still appear under such subheadings. As a result, and because all parties to the proceeding suggested this as the appropriate subheading with which to value ferric trichloride, we have used HTS subheading 2827.33.00 for the final results.<sup>44</sup>

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<sup>41</sup> See Jiheng Chemical’s January 5, 2007 Surrogate Value Rebuttal Comments at Exhibit 1.

<sup>42</sup> See Petitioners’ December 6, 2006 Surrogate Value Filing at Exhibit 2.

<sup>43</sup> See *CVP 23 5/10/2007* at Comment 1.

<sup>44</sup> See Memorandum to the File from Marin Weaver, Senior International Trade Analyst, re: “Conversation about World Trade Atlas” (December 10, 2007).

#### **Comment 4: Water**

Petitioners state that according to the Act, “the valuation of the factors of production shall be based on the best available information,” citing section 773(c)(1)(B) of the Act. Petitioners state that the Department’s practice for calculating normal value is to consider the quality, specificity and contemporaneity of the information, citing *Shrimp* 7/16/2004, 69 FR at 42682. Petitioners contend that they put on the record the water tariff enacted on February 1, 2005 by the state government of Karnataka for the Bangalore region, as well as the water tariff for Chennai region effective June 15, 2005. Petitioners and BioLab contend that the inflated surrogate value for water from the Maharashtra Industrial Development Corporation used by the Department in the preliminary results is 18 months prior to the POR, requiring the Department to use an inflation factor to make the value applicable to the POR. Petitioners and BioLab maintain that the average of the industrial rates for Bangalore region and Chennai region is more appropriate, in that they are contemporaneous with the POR and, therefore, a better option than the inflated 2003 Maharashtra water rate.

Jiheng Chemical contends that the Maharashtra data continue to be more representative because the Maharashtra data represent a publicly available source and incorporate multiple data points within a large area of India, citing *Persulfates* 2/14/2006 at Comment 5 and *Polyester Staple Fiber* 12/26/2006, 71 FR at 7731. Jiheng Chemical rebuts Petitioners’ proposal, arguing that the Bangalore and Chennai rates are city-specific and cover a much smaller land area and population than the Maharashtra data. Jiheng Chemical contends that the Department's practice is to use a non-contemporaneous surrogate value if the Department believes that this value proves to be better data than other, more contemporaneous data. Also, Jiheng Chemical states that the Department prefers, “whenever possible, to use countrywide data, and only resorts to company-specific (or regional) information when countrywide data are not available,” citing *Honey* 6/16/2006 at Comment 1.

#### **Department’s Position**

We continue to find that the Maharashtra water rate used in the preliminary results remains the most appropriate surrogate value for water because it contains a large number of data points in India. See *Garlic* 6/22/2007 at Comment 8. We have declined to average the industrial water rates in the Bangalore and Chennai regions as suggested by Petitioners and BioLab because the Bangalore and Chennai water rates are city-specific, and it would be inappropriate to average city-specific rates with a state-wide rate, which already consists of an average of both city and rural rates.

#### **Comment 5: Surrogate Value for Desiccant**

Petitioners contend that the components of the desiccant Jiheng Chemical purchases consist of 14.4 grams silica gel and 5.1 grams carbon. Therefore, Petitioners argue, the Department should value Jiheng Chemical’s desiccant input using an average value of activated charcoal and silicon

dioxide from Indian import statistics rather than just silicon dioxide as the Department did in the preliminary results.

Jiheng Chemical argues that since desiccant does not have a dedicated HTS tariff number, the Department must select the most comparable tariff number that represents desiccant. Jiheng Chemical argues that since silica gel is the essential element in desiccant – in fact, the only ingredient for which a chemical analysis is listed – and represents the greatest percentage of overall weight, the Department should continue to use silicon dioxide as the surrogate value for desiccant in the final results.

### **Department's Position**

Record evidence shows that the main component of desiccant used by Jiheng Chemical consists of silica gel, 99.7 percent of which is composed of silicon dioxide. We are not persuaded by Petitioners' request that we use an average of the Indian WTA values for silicon dioxide and activated charcoal based on the respective weights of each component. First, unlike the chemical analysis for silica gel, the record does not contain a chemical analysis of the carbon component of the desiccant. Thus, we have no basis for selecting an appropriate surrogate value for the carbon component. Second, Petitioners' request ignores the third component of Jiheng Chemical's desiccant, whose weight accounts for approximately one-third of the weight of the desiccant. The record contains no information as to the nature of this component, or an appropriate surrogate value for this item. Accordingly, for the final results, we have continued to value desiccant using the Indian WTA value for silicon dioxide.

### **Comment 6: Surrogate Value for Electricity**

Jiheng Chemical contends that by using the Indian electricity rates from 2000 found in *Energy Prices and Taxes* and published by the IEA rather than the rate in effect since December 14, 2004 published by the IMP, which Jiheng Chemical put on the record,<sup>45</sup> the Department failed to use the best available information to determine the surrogate value for electricity in the preliminary results.<sup>46</sup> Jiheng Chemical states that the Department must “conduct a fair comparison of the data sets on the record with regard to its announced method or criteria.”<sup>47</sup>

According to Jiheng Chemical, the Department must also provide a well-reasoned explanation as to why the data that it chose are the best available information, especially when it deviates from its standard criteria for the selection of surrogate values, one of which is that the data should be

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<sup>45</sup> See Chlorinated Isocyanurates from China: 1st Administrative Review (A-570-898): Provision of Surrogate Values for Factors of Production submitted by Jiheng Chemical on November 27, 2006 ("Jiheng Chemical's November 27, 2006 Surrogate Value Submission") at Exhibit 34.

<sup>46</sup> Jiheng Chemical cites 19 U.S.C. 1677b(c)(1) and *Shanghai Foreign Trade* CIT 10/31/2006 at 1350.

<sup>47</sup> Jiheng Chemical cites *Dorbest* CIT 10/31/2006 at 13.

contemporaneous with the POR.<sup>48</sup> Jiheng Chemical contends that the IMP data are superior in terms of contemporaneity and are also publicly available, non-export average, product-specific and tax-exclusive, whereas the inflated IEA data do not take into account the steps that India has taken to lower its electricity rates.

BioLab responds that, by using the IEA data, the Department did not fail to use the best available information required by the statute and its regulation, as alleged by Jiheng Chemical. BioLab states that the IMP data proposed by Jiheng Chemical are issued by the Financial Studies & Assistance Division of the CEA, which publishes the data on its website at [www.cea.nic.in](http://www.cea.nic.in). BioLab argues that in *Wooden Bedroom Furniture* 8/22/2007 the Department examined the CEA data. BioLab claims that the Department determined that the CEA data “appear to represent estimated rates,” the Department “could not determine how the CEA data were compiled,” and the Department could not determine “whether or not the calculated electricity prices were adjusted with an inflator or deflator to be contemporaneous with the POR.” Further, BioLab argues that the Department has repeatedly found that the IEA data, using an inflator, represent the most reliable available data for electricity.<sup>49</sup>

### **Department’s Position**

In *Wooden Bedroom Furniture* 8/22/2007, the Department examined the CEA data the respondents put on the record, as well as the CEA’s official web site [www.cea.nic.in](http://www.cea.nic.in). The Department declined to adopt the CEA data because the Department “could not determine how the CEA data were compiled” and the “estimated average rates chart did not demonstrate how usage rates were recorded.”<sup>50</sup> Additionally, the Department could not determine how the samples for each category in the CEA data were selected. Further, the Department found the effective dates for the tariff ranging from 1999 to 2006, and the Department could not determine “whether or not the calculated electricity prices were adjusted with an inflator or deflator . . . .”<sup>51</sup> As a result, consistent with the Department’s decision in *Wooden Bedroom Furniture* 8/22/2007, we have continued to use the IEA data adjusted with a WPI inflator in the final results to value electricity usage.

### **Comment 7: Surrogate Value for Steam Coal**

Petitioners and BioLab argue that for the final results the Department should value steam coal using Indian WTA import data rather than the TERI Data used in the preliminary results.

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<sup>48</sup> *Id.* at 30.

<sup>49</sup> BioLab cites *Wooden Bedroom Furniture* 8/22/2007 at 83-84.

<sup>50</sup> See *Wooden Bedroom Furniture* 8/22/2007 at Comment 15.

<sup>51</sup> *Id.*

Petitioners and BioLab argue that the TERI Data relate to the operations of a single company, CIL, and that its prices are only available to “core” purchasers of coal in India. Petitioners argue that record evidence demonstrates that purchasers in non-core industries are not able to buy at the prices listed in the TERI Data, and must pay substantially higher prices for domestic or imported coal.<sup>52</sup> Petitioners and BioLab further argue that the industries classified as “core” coal consumers do not include the chemical industry.<sup>53</sup> Finally, Petitioners argue that although the CIT ruled in *Hebei Metals* CIT 2005 that the Department should value coal using the domestic TERI Data, the CIT challenged the Department’s assumption that domestic data are preferable by saying that “{t}his assumption may be undermined by record evidence showing how an import price more accurately reflects the actual costs incurred by a producer of the relevant product,” citing *Hebei Metals* CIT 2005 at 1274. Petitioners argue that the CIT’s ruling in *Hebei Metals* 2005 should not prevent the Department from using Indian WTA import data in the final results because the CIT did not consider the issue of whether TERI prices were available to non-core coal consumers. BioLab argues that the Department has relied on import data “where it determines that the import price is the more accurate value.”<sup>54</sup>

Jiheng Chemical cites a recent instance in which the Department determined that TERI Data is the most appropriate source with which to value steam coal, even after the Department specifically examined “the monopolistic structure of the coal industry in India,” citing *Saccharin* 9/11/2007 at Comment 3. According to Jiheng Chemical, in making its determination that TERI Data were the best available information with which to value steam coal, the Department also considered the fact that use of TERI Data had been upheld by the Courts in *Wuhan Bee* CIT 2005. Jiheng Chemical states that Petitioners and BioLab point to some press reports which indicate that some customers may pay higher prices than the CIL published prices. However, Jiheng Chemical argues that those articles do not specify the type of coal available at certain prices, nor do they provide systematic review of steam coal prices from specific mines at a specific time. Additionally, Jiheng Chemical argues that no evidence put on the record by BioLab indicates that the CIL steam coal prices are not market-driven. In fact, Jiheng Chemical argues, the CIL itself states that the prices for the type of steam coal used by Jiheng Chemical were deregulated in 1996. Further, Jiheng Chemical contends that the Department has determined that the Indian imported coal data are “aberrationally high.”<sup>55</sup>

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<sup>52</sup> See *World Coal, The Indian Coal Sector: A Tale of Promise and Problems*, contained in Chlorinated Isocyanurates from the People's Republic of China; 2004-06 Administrative Review; Submission of Factor Value Data submitted by BioLab on August 6, 2007 ("BioLab's August 6, 2007 Surrogate Value submission") at Exhibit 3; See also, *Out of Court, Glitches in Coal E-Auction*, contained in Chlorinated Isocyanurates from the People's Republic of China; 2004-06 Administrative Review; Submission of Factual Information submitted by BioLab on December 15, 2006 at Exhibit 2.

<sup>53</sup> See *Coal Marketing System*, contained in BioLab's August 6, 2007 Surrogate Value submission at Exhibit 3.

<sup>54</sup> BioLab cites *Rhodia* CIT, 2001 at 1352.

<sup>55</sup> Jiheng Chemical cites *Barium Carbonate* 8/6/2003 at Comment 2.

## Department's Position

Section 773(c)(1) of the Act states that “the valuation of the factors of production shall be based on the best available information regarding the values of such factors. . . .” We continue to find that the TERI Data is the more appropriate source with which to value the steam coal input for the final results because they are more specific to Jiheng Chemical’s reported input. In the instant case, Jiheng Chemical has provided the Department with information on the specific types of coal it uses and their UHV.<sup>56</sup> TERI Data are categorized by major types of coal and UHV value whereas WTA import data are listed under “steam coal” without further specificity. Furthermore, the Department has consistently found in recent cases that the TERI Data are the most appropriate surrogate value for steam coal, notwithstanding “concerns” over the “monopolistic structure of the coal industry in India.”<sup>57</sup> In each of the noted recent cases, the Department stated that, although the Department has expressed concerns regarding the monopolistic structure of the coal industry in India, it nevertheless found that TERI steam coal prices are appropriate because they are “representative of the coal industry throughout India.”

With respect to Petitioners’ and BioLab’s suggestion that non-core industries are not able to buy at the prices listed in the TERI Data, and that the industries classified as “core” coal consumers do not include the chemical industry, the Department notes that saccharin is a chemical. Nevertheless, as noted above, the Department recently determined TERI Data to be preferable to Indian WTA data in *Saccharin* 9/11/2007 at Comment 3. We note further that 11 of the 12 months covered by the POR for saccharin overlap with the POR for the instant case. For all of the foregoing reasons, we continue to find that TERI Data are the best available data with which to value steam coal for the final results.

## Comment 8: Surrogate Value for International Ocean Freight

Petitioners argue that the Department erred when it included only the “basic ocean freight” charges in calculating the surrogate value for international ocean freight in the preliminary results. Petitioners contend that the Department should include all other applicable charges listed on the price quotes sheet obtained from Maersk Sealand because “the price quotes, with all of the inclusive charges, are actual rates charged by a market economy supplier to ship cargo.”<sup>58</sup>

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<sup>56</sup> See Chlorinated Isocyanurates from the People’s Republic of China: 1<sup>st</sup> Administrative Review: (A-570-898): Provision of Surrogate Values for Factors of Production submitted by Jiheng Chemical on November 17, 2006 at 16.

<sup>57</sup> See *Saccharin* 9/11/2007 at Comment 3; and *Coated Free Sheet Paper* 10/17/2007 at Comment 19. See, also, *Fence Posts* 6/14/2007, 72 FR 32835, 32836, where the Department explained that the CIT sustained the Department’s final results of redetermination in which the Department determined that TERI Data was the best source of a surrogate value for coal because the data were complete, comprehensive (in that they covered all sales of all types of coal made by CIL and its subsidiaries), and exclusive of duties and taxes).

<sup>58</sup> Petitioners cite *Fresh Garlic* 5/4/2006 at Comment 7.

Jiheng Chemical responds that there is no record information to substantiate that Jiheng Chemical incurred any of those surcharges and, as a result, the Department should not include such charges in Jiheng Chemical's surrogate ocean freight. Jiheng Chemical proposes that, at the very least, the Department should consider which line items are applicable to Jiheng Chemical's shipping transaction and eliminate any charges not applicable to Jiheng Chemical's shipping transactions.

### **Department's Position**

In *Fresh Garlic* 5/4/2006 at Comment 7, respondents argued that the Maersk Sealand price quotes were distorted because they contain significant charges not incurred by any of the respondents. Jiheng Chemical makes a similar argument in the instant case. Nevertheless, in *Fresh Garlic* 5/4/2006 at Comment 7, the Department stated that "Maersk Sealand is the best publicly-available source from which to value ocean freight," and that the Maersk "price quotes, **with all of the inclusive charges**, are actual rates charged by a market economy supplier to ship cargo from" a specific PRC port to the United States (emphasis added). Likewise, in the instant review, we find that the Maersk Sealand price quote represents the actual rates paid to ship from the PRC to the United States. However, we have not included itemized charges that are inapplicable to Jiheng Chemical's transactions (e.g., Shanghai Shipping Charge, because Jiheng Chemical did not ship through Shanghai).

### **Comment 9: Surrogate Values from *Chemical Weekly***

Jiheng Chemical contends that the Department had no reason to use price data from *Chemical Weekly* for a 12-month period (March 2005 - February 2006) in calculating surrogate values for hydrochloric acid, barium chloride and sulfuric acid, and not include data placed on the record by Jiheng Chemical covering the entire POR, particularly when the Department used price data for the entire POR for all other FOPs in the preliminary results. Also, Jiheng Chemical claims that the price figure for sulfuric acid in the Bangalore region for the week of September 6, 2005 in the spreadsheet the Department used in the preliminary results is different from *Chemical Weekly*.

Petitioners point out that in the denominator of the average-unit-price calculation for sulfuric acid the Department inadvertently included weeks for which no pricing data were reported.

### **Department's Position**

For the final results, we have revised the spreadsheet used to calculate the sulfuric acid surrogate value to reflect the correct price figure for the week of September 6, 2005 for the Bangalore region. However, we have not revised the calculation as suggested by Petitioners because we do not agree that we included in the denominator weeks for which no pricing data were reported. With respect to the price data for hydrochloric acid, barium chloride and sulfuric acid placed on the record by Jiheng Chemical, these data are contained in three spreadsheets without copies of the source documents from which the data were obtained. Consequently, we are unable to corroborate the accuracy of the pricing data submitted by the Jiheng Chemical and, therefore, we



have declined to include those data for the final results.

#### **Comment 10: Eligibility of DCM as Source for Surrogate Financial Ratios**

Petitioners note that, in the preliminary results, the Department used audited financial statements from two Indian companies to value factory overhead, SG&A expenses and profit: Kanoria and DCM. Petitioners contend that the Department should disregard DCM as a source for calculating financial ratios in the final results. Petitioners contend that chemical production in DCM accounts for less than 15 percent of the total operations, and that other business segments have completely different cost profiles and operating performance from DCM's chemical segment. Petitioners maintain that the Department's practice is to consider the quality, specificity and contemporaneity of the source information in selecting the best information, citing *Ironing Tables* 3/12/2007 at Comment 1. Moreover, pointing out the fact that Jiheng Chemical requested that DCM's traded goods be included in the financial ratio calculation in the final results, Petitioners submit that the amount of revenue from traded goods indicates that DCM has a different cost structure than Jiheng Chemical, and that DCM's experience does not reflect that of a chemical producer such as Jiheng Chemical.

Petitioners point out that the Department's preference is to match the surrogate companies' production experience with respondents' production experience.<sup>59</sup> Petitioners contend that in the past the Department has rejected surrogate companies whose business operations differed significantly from the respondents' operations,<sup>60</sup> or where a company had several branches that are not dedicated to the production of either identical or comparable merchandise.<sup>61</sup> Thus, Petitioners argue that the Department should recalculate surrogate financial ratios using only the audited annual financial report of Kanoria for the final results.

Jiheng Chemical responds that in the original investigation, the Department disagreed with Petitioners' and BioLab's contention that DCM was not a significant producer of comparable merchandise. Jiheng Chemical further cites the Department's decision to examine a company's production figures rather than its sales figures in determining whether a certain product constitutes a significant portion of the company's operations. Jiheng Chemical maintains that in the investigation, the Department determined in the investigation that Kanoria's and DCM's production figures indicated that both companies predominantly produce chemical compounds of which stable bleaching powder and calcium hypochlorite are subsets. Additionally, Jiheng Chemical maintains that the Department determined that Kanoria and DCM produce comparable

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<sup>59</sup> Petitioners cite *Shrimp* 12/8/2004 at comment 9D.

<sup>60</sup> Petitioners cite *Polyester Staple Fiber* 4/19/2007 at Comment 12 (where the Department rejected the financial statements of a company that primarily focused on refining petroleum instead of polyester staple fiber); and *Ironing Tables* 3/12/2007 at Comment 1 (where the Department rejected the financial statements of a company where only about 25 percent of its total sales were of comparable merchandise).

<sup>61</sup> Petitioners cite *Preserved Mushrooms* 7/11/2003 at Comment 4.

merchandise at the same level of integration as that at which the respondents produce the subject merchandise. In sum, Jiheng Chemical contends that DCM has not changed its production since the period of investigation and, therefore, remains a significant producer of comparable merchandise.

### **Department's Position**

Section 351.408(c)(4) of the Department's regulations directs the Department to value the financial ratios with nonproprietary information gathered from producers of identical or comparable merchandise in the surrogate country. During the investigation, the Department calculated financial ratios using the financial statements of both Kanoria and DCM because the Department determined that: (1) both calcium hypochlorite and stable bleaching powder are comparable to the subject merchandise; (2) it was appropriate to examine the production figure rather than the sales figure of a company in evaluating its suitability to serve as a surrogate producer; (3) both DCM and Kanoria predominantly produce chemical compounds of which stable bleaching powder and calcium hypochlorite are subsets; and (4) both DCM and Kanoria produce comparable merchandise at the same level of integration as the respondents produce the subject merchandise.<sup>62</sup>

In light of several recent determinations, however, we have reconsidered the use of DCM's financial statements for this administrative review in the calculation of the financial ratios. For instance, as noted by Petitioners, in *Ironing Tables* 3/12/2007 at Comment 1, the Department weighed the merits of two surrogate companies' financial statements. The Department rejected one company's financial statements, explaining that its production of comparable merchandise "comprises only a quarter of its total sales," and stating that the second company's "financial information better represents the financial conditions" of producers of subject merchandise.<sup>63</sup> In the instant review, DCM's production of chemical products represents less than 15 percent of its total sales revenue.

In addition, in *Wooden Bedroom Furniture Remand Redetermination* 5/25/2007 at 71,<sup>64</sup> the Department issued a redetermination on remand, expressing concerns "that the inability to properly allocate {a surrogate company's} SG&A expenses and profit to merchandise that meets the description of the scope could create distortions in the calculation of {a surrogate company's} financial ratios."<sup>65</sup> Additionally, in the recent administrative review of wooden bedroom furniture, the Department rejected a surrogate company's financial statements because the

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<sup>62</sup> See *Chlorinated Isos* 5/10/2005 at Comment 2.

<sup>63</sup> See *Ironing Tables* 3/12/2007 at Comment 1

<sup>64</sup> Available at <http://ia.ita.doc.gov/remands/index.html>

<sup>65</sup> See *Wooden Bedroom Furniture Remand Redetermination* 5/25/2007 at 71.

financial statements lacked “sufficient detailed information to serve as the basis of an informed allocation of SG&A and overhead expenses between the” different divisions of the company’s operations.<sup>66</sup> The Department stated further that the surrogate company in question had “mixed operations and a significant portion of its business activities do not relate to” comparable merchandise. “Because significant concerns remain regarding {the surrogate company’s} financial statements, and there are . . . other reliable financial statements available on the record of this review,” the Department disregarded the financial statements in question.<sup>67</sup>

Similarly, DCM’s financial statements identify mixed operations, and a significant portion of its business activities do not relate to the production of comparable merchandise. Specifically, DCM has significant operations unrelated to production of comparable merchandise, such as agricultural products, sugar and fertilizer. Moreover, according to DCM’s financial statements, the largest single revenue source is from traded goods, and a significant percentage of its income is identified as “other revenue.” DCM’s financial statements prevent us from making an informed allocation of SG&A and overhead expenses among the different divisions of the company’s operations. Consequently, we find that it is less suitable than Kanoria for use as a surrogate company for purposes of calculating financial ratios. Accordingly, for the final results, we have relied on Kanoria’s financial statements as the basis for calculating the surrogate financial ratios.

#### **Comment 11: DCM’s Expenses for Traded Goods in the Financial Ratio Calculation**

Jiheng Chemical alleges that the Department erred in excluding DCM’s expense for traded goods from the denominator for calculating SGA and profit ratios in the preliminary results. Jiheng Chemical contends that the Department’s practice is to include the expense for traded goods in the denominator when calculating the SGA and profit ratios (citing *Tapered Roller Bearings* 12/19/2006 at Comment 2).

No other party commented on this issue.

#### **Department’s Position**

Because we are relying on Kanoria alone for purposes of calculating the surrogate financial ratios for the final results, this issue is moot.

#### **Comment 12: Applying Income Offsets in Calculating Financial Ratios**

Jiheng Chemical alleges that, in the preliminary results, contrary to its practice, the Department erred by applying income offsets only to the denominators when calculating the financial ratios

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<sup>66</sup> See *Wooden Bedroom Furniture* 8/22/2007 at Comment 17B.

<sup>67</sup> *Id.*

for Kanoria and DCM. First, Jiheng Chemical argues that the Department failed to offset SG&A expenses with interest income when the financial reports indicate that the income is short-term interest income (citing *Hand Trucks* 5/15/2007 at Comment 7). Jiheng Chemical states that DCM's financial statements indicate "interest income" under the category of "Income from Services and Other Income." Jiheng Chemical claims that the "interest income" is derived from a category titled "Loans and Advances" under "Current Assets, Loans and Advances."<sup>68</sup>

Similarly, Jiheng Chemical states that Kanoria's financial statements include interest income on "Fixed Deposits with Banks" and on "Loans to Bodies Corporate." Jiheng Chemical claims that both of these interest income items are in "Loans & Advances" under "Current Assets, Loans and Advances."<sup>69</sup> Therefore, Jiheng Chemical contends that, consistent with the Department's practice, the Department should offset DCM's and Kanoria's SG&A expenses by their respective interest income amounts.

Second, Jiheng Chemical claims that the Department failed to offset overhead by the income on fixed assets sold, although the income reduces Kanoria's overhead.

BioLab argues that the Department's established practice is to include income earned on the disposal of fixed assets in the SG&A calculation, not the overhead calculation, citing *Softwood Lumber* 12/12/2005. Thus, according to BioLab, any adjustment for income earned on the sale of fixed assets should be applied to SG&A.

### **Department's Position**

Consistent with the Department's practice, which is to offset SG&A with short-term interest income,<sup>70</sup> we have corrected this error in the calculation of SG&A expenses for Kanoria for the final results. In addition, consistent with the Department's practice, we have offset SG&A with income from the sale of fixed assets.<sup>71</sup> Because we are relying on Kanoria alone for purposes of calculating the surrogate financial ratios for the final results, we have not addressed this issue with respect to DCM.

### **Comment 13: Changes in Stock for DCM's and Kanoria's Cost of Materials Calculations**

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<sup>68</sup> See DCM's Annual Report 2005-2006 at 61 and 63 contained in Jiheng Chemical's November 17, 2006 submission at Exhibit 42-1.

<sup>69</sup> See Kanoria's Annual Report 2005-2006 at 72 and 73 contained in Jiheng Chemical's November 17, 2006 submission at Exhibit 42-2.

<sup>70</sup> See *Hand Trucks* 5/15/2007 at Comment 7 and *Poly Retail Bags* 3/19/2007 at Comment 3g.

<sup>71</sup> See *Softwood Lumber* 12/12/2005 at Comment 8 ("It is the Department's practice to include gains or losses incurred on the routine disposition of fixed assets in the G&A expense ratio calculation.")

Jiheng Chemical claims that, contrary to its practice, the Department erred by failing to include opening inventory of work-in-process stock in calculating the cost of raw materials for DCM in the preliminary results. Also, Jiheng Chemical claims that the Department erred by subtracting from raw materials and packaging the increase in all inventory for Kanoria instead of adjusting only for the change in work-in-process stock (citing *Wooden Bedroom Furniture* 12/06/2006 at Comment 4).

No other party commented on this issue.

### **Department's Position**

We find that Kanoria's financial statements provide sufficient detail that enables us to discriminate between inventory changes in finished goods and inventory changes in work-in-process. As the latter item is properly categorized as production expense, we are including it in our calculation as ML&E. Consistent with the Department's practice, we have excluded the changes in finished goods inventory from Kanoria's material cost calculation and included the changes in work-in-process inventory.<sup>72</sup> Because we are relying on Kanoria alone for purposes of calculating the surrogate financial ratios for the final results, we have not addressed this issue with respect to DCM.

### **Comment 14: Use of Net Cost in Financial Ratio Calculations**

Jiheng Chemical states that in calculating the surrogate financial ratios used in the preliminary results, the Department added all of the expense amounts per column to determine the gross cost expense amount, and then deducted certain income items from the expense categories as offsets to determine the net cost expense amount on a separate line. Jiheng Chemical claims that contrary to its practice, the Department mistakenly used the gross cost expenses as the numerator for manufacturing overhead for both DCM and Kanoria. Also, Jiheng Chemical claims that the Department mistakenly used the gross cost expenses as the numerator in the SG&A calculation for DCM.<sup>73</sup>

No other party commented on this issue.

### **Department's Position**

Jiheng Chemical proposed that we offset Kanoria's overhead expense by income earned on the sale of fixed assets. However, because we have determined that income earned from the sale of fixed assets should be applied as an offset to SG&A expense and not to overhead expense, this issue is moot with respect to Kanoria. See Comment 12, above. Because we are relying on

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<sup>72</sup> See *Wooden Bedroom Furniture* 12/06/2006 at Comment 4.

<sup>73</sup> Jiheng Chemical cited *Poly Retail Bags* 3/19/2007.

Kanoria alone for purposes of calculating the surrogate financial ratios for the final results, we have not addressed this issue with respect to DCM.

**Comment 15: Intermediate Input By-Product Offsets for Chlorine Gas, Hydrogen Gas, Sulfuric Acid and Ammonia Gas**

In the preliminary results, the Department granted offsets to normal value for Jiheng Chemical's claimed by-products (*i.e.*, chlorine gas, hydrogen gas, sulfuric acid and ammonia gas, each discussed in further detail below). Petitioners and BioLab argue that the Department should disallow Jiheng's claimed by-product credits because Jiheng Chemical has provided no documentation concerning the actual production amounts of these claimed by-products, or the actual amounts reintroduced into production of downstream products for resale. Petitioners argue that, consistent with the Department's past practice in such circumstances, in the absence of the actual records for production quantities of by-products, the Department did not grant by-product credits. Citing to *Malleable Iron Pipe Fittings* 6/29/2006 at Comment 4 and *Lined Paper Products* 9/8/2006 at Comment 23.

Jiheng Chemical responds that, as during the investigation, it took a conservative approach by requesting a by-product offset only for by-products that were actually sold during the POR, and worked from these sales to determine the quantity of by-products claimed. Also, Jiheng Chemical argues that the by-products identified in this review were the same ones claimed in the investigation. According to Jiheng Chemical, during the investigation, the Department accepted and verified the formulae used to derive the quantities of by-product credits. Jiheng Chemical distinguishes the facts in cases cited by Petitioners from the facts of this review. Regarding *Malleable Iron Pipe Fittings* 6/29/2006 Comment 4, Jiheng Chemical states that the Department denied the by-product claim because the respondent did not keep any records of the amount of recovered scrap that re-entered the production cycle. Jiheng Chemical argues that its by-products do not re-enter the production process but, rather, are sold. Additionally, Jiheng Chemical argues that it has demonstrated that its records of sales are accurate.

Regarding *Lined Paper Products* 9/8/2006 Comment 23, Jiheng Chemical states that the Department denied the by-product claim because the respondent did not demonstrate that the scrap paper was produced in the course of producing the subject merchandise rather than non-subject paper. Moreover, Jiheng Chemical states that the Department indicated that it would accept the sales of scrap paper as evidence of the by-product claim; however, the respondents failed to use their sales records to allocate those sales among the various types of paper including subject and non-subject paper that generate the scrap. Jiheng Chemical argues that in contrast to the respondents in *Lined Paper Products*, Jiheng Chemical demonstrated in the investigation that the by-products were produced as a consequence of production of the subject merchandise, and that in this review it has provided proof of the sales quantity.

**A. Chlorine Gas**

Petitioners and BioLab urge the Department to reject Jiheng Chemical's claim of a by-product

offset for chlorine gas used in the production of hydrochloric acid. Petitioners argue that the purified chlorine gas used by Jiheng Chemical to produce hydrochloric acid is a co-product rather than a by-product, and has been treated as a co-product in Jiheng Chemical's FOP allocation. Moreover, Petitioners argue that even if purified chlorine gas were considered to be a by-product, the purified chlorine gas that Jiheng Chemical uses to produce hydrochloric acid is recovered from Jiheng Chemical's chlorine liquefaction process. Petitioners argue that the liquefaction process is unrelated to production of subject merchandise, and liquefied chlorine gas is not used to produce the subject merchandise. According to Petitioners, any by-product recovered from the liquefaction process cannot be used to offset the costs of production of the subject merchandise, citing *Polyvinyl Alcohol* 8/11/2003 at Comment 2; *Live Swine from Canada* 3/11/2005 at Comment 3, and *Carbon and Certain Alloy Steel Wire Rod* 8/30/2002 at Comment 5. Additionally, Petitioners and BioLab argue that Jiheng Chemical increased its chlorine gas by-product claim from the first supplemental section D response onward, and this increase is likewise associated with chlorine gas captured in the liquefaction process that is not part of the production of subject merchandise.

Jiheng Chemical responds that Petitioners' argument over whether purified chlorine gas is a co-product or a by-product does not address the issue of whether discharged chlorine gas is a by-product of the chlor-alkali production. Jiheng Chemical states that it claimed discharged chlorine gas as a by-product, not purified chlorine gas as Petitioners and BioLab contend. Jiheng Chemical argues that the Department found during the investigation that by-products that resulted from intermediate stages of production of the subject merchandise were permissible for offset purposes, citing *Chlorinated Isos* 5/10/2005 at Comment 6. Jiheng Chemical states that it only claimed an offset for discharged chlorine gas that is generated in both the purification and liquefaction processes. Furthermore, Jiheng Chemical states that it only claimed an offset for the excess discharged chlorine gas generated through the liquefaction process, as it did during the investigation. Additionally, Jiheng Chemical contends that the Department never asked about the change in the claimed quantity; therefore, the Department cannot now penalize Jiheng Chemical for this. Jiheng Chemical attributes the offset increase to the sales level of hydrochloric acid.

## **B. Hydrogen Gas**

Petitioners and BioLab argue that the Department should deny Jiheng Chemical's claimed offsets for hydrogen gas because of the large and unexplained increase in the recovered quantity of hydrogen gas reported in the supplemental section D response compared with the amount reported in the original section D response. Petitioners argue that Jiheng Chemical did not provide actual production records of hydrogen gas to substantiate the reported increase of recovered quantity.

Alternatively, Petitioners argue that, to the extent that the Department allows a by-product offset for hydrogen gas, the Department should use WTA Indonesian import data to value hydrogen gas. According to Petitioners, the Indian import data involved a small quantity of imports. Furthermore, Petitioners and BioLab claim that the Indian data are distorted by that fact that

imports from Belgium, the United Kingdom, Germany and Singapore each involved imports of less than one metric ton during the POR and had AUVs that were 10 to 20 times higher than the AUVs of imports from countries with larger import volumes. Petitioners maintain that Indonesian data are more reliable because they include more than eight times the import volume over India during the same period. Petitioners add that the Department previously elected using Indonesian import data over Indian import statistics in recognition of the limited Indian import data.<sup>74</sup>

Jiheng Chemical replies that the Department's practice is to use data from the primary surrogate country whenever such data are available and meet the relevant criteria for surrogate values. Jiheng Chemical states that in *Saccharin* 9/11/2007, respondents argued that Indian import data of aqueous ammonia should not be used because the volume was too small, and that the respondents provided historical data showing increasing prices and declining import volume. Nevertheless, Jiheng Chemical contends, the Department determined to use the Indian import data because the Department "cannot conclusively find that the lower volumes of imports into India are, in fact, not in commercial quantities, that the values are aberrationally high, or whether there is an emerging trend towards lower quantities and higher AUVs," citing *Saccharin* 9/11/2007 at Comment 1.

### **C. Waste Sulfuric Acid**

Petitioners and BioLab urge the Department to deny Jiheng Chemical's claimed offset for waste sulfuric acid because of the large and unexplained increase of the recovered quantity of waste sulfuric acid reported in the supplemental section D response compared with the quantity reported in the original section D response. Petitioners argue that Jiheng Chemical did not provide actual production records of the waste sulfuric acid to substantiate the reported increase of recovered quantity.

Additionally, Petitioners note that in the preliminary results the Department valued this alleged by-product at the highest possible concentration range reported by Jiheng Chemical. Petitioners argue that because Jiheng Chemical has not demonstrated that it is entitled to any offset, the Department should use a lower concentration level in the final results if the Department decides to continue to grant a waste sulfuric acid offset.

Jiheng Chemical did not comment on this specific issue.

### **D. Ammonia Gas**

Petitioners and BioLab maintain that the Department should not grant a by-product offset for Jiheng Chemical's claimed ammonia gas because Jiheng Chemical did not provide records

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<sup>74</sup> Petitioners cite *Tetrahydrofurfuryl Alcohol* 1/27/2004, 69 FR at 3,893.



concerning the amount of ammonia gas that it produced, or the amount used in the production of ammonium sulfate during the POR.

Additionally, Petitioners and BioLab urge the Department not to use Indian import statistics for anhydrous ammonia to value the waste ammonia gas if the Department allows the by-product offset reported by Jiheng Chemical. Petitioners and BioLab argue that anhydrous ammonia is always traded at a minimum purity of at least 99.5 percent and is transported in pressurized and liquefied form. The waste gas produced in Jiheng Chemical's kiln is not anhydrous ammonia and could not be converted to anhydrous ammonia without substantial cost and processing, according to an industry expert's declaration submitted by Petitioners.<sup>75</sup> Therefore, Petitioners and BioLab argue that using Indian import statistics for anhydrous ammonia to value waste gas would substantially overstate any real value associated with the waste gas. With no alternative surrogate value on the record, Petitioners assert that the Department should disallow any offset, as it has done in previous cases where it had no useable surrogate values on the record.<sup>76</sup> According to Petitioners, Jiheng Chemical's waste ammonia gas could not be marketed and sold, as the ammonia gas Jiheng Chemical generates has no commercial value, citing to the affidavit they submitted from an industry expert.

Jiheng Chemical states that the affidavit of an industry expert submitted by Petitioners indicates that urea kilns in the United States would burn waste ammonia gas. However, Jiheng Chemical contends that in contrast to the experience in the United States, Jiheng Chemical turns ammonia gas into ammonium sulfate via the introduction of sulfuric acid, and the fact that Jiheng Chemical sold ammonium sulfate demonstrates that the ammonia gas by-product does have commercial value. Jiheng Chemical contends that in the investigation, the Department verified this production process. Additionally, Jiheng Chemical contends that the formula Jiheng Chemical used reflects 100-percent purity; therefore, the Department's use of anhydrous ammonia with 99.5 percent purity as a surrogate value is proper.

### **Department's Position**

As a result of the issues raised by Petitioners and BioLab regarding Jiheng Chemical's eligibility for an adjustment to normal value based on its claimed by-product offsets, we carefully re-examined Jiheng Chemical's reported FOP allocation methodology. Specifically, we traced Jiheng Chemical's material inputs through each step of the production process. Based on our analysis of the methodology by which Jiheng Chemical reported its material input consumption, we have determined that Jiheng Chemical reported the quantity of each material input for the production of subject merchandise net of the quantity of the same input used in the production of other, non-subject products. Moreover, we note that Jiheng Chemical failed to provide

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<sup>75</sup> Affidavit of industry expert contained in Petitioners' August 6, 2007 surrogate value submission at Exhibit 12.

<sup>76</sup> Petitioners cite *Barium Carbonate* 8/6/2003 at Comment 5.

documentation repeatedly requested by the Department to support claimed production quantities of recovered by-products.<sup>77</sup> Further, in response to our request that it “explain the way Jiheng Chemical keeps by-products records in the normal course of production,”<sup>78</sup> Jiheng Chemical responded by saying that it “used the sales invoices to determine the recovered volume of the by-products, which is kept in the accounting department.”<sup>79</sup> As a result, we have determined that the claimed by-product offsets are from costs not attributed to the production of subject merchandise.<sup>80</sup> Accordingly, for the final results, we find that Jiheng Chemical is not entitled to the claimed by-product offsets (*i.e.*, chlorine gas, hydrogen gas, sulfuric acid and ammonia gas) to normal value.

Due to the proprietary nature of the information under discussion, a full discussion of this issue can be found in the accompanying analysis memorandum; *see* Jiheng Chemical’s analysis memorandum for further details. In light of the fact that we are denying Jiheng Chemical’s claimed by-product offsets, we have not addressed other issues raised with respect to the claimed by-product offsets, such as proper valuation. We acknowledge that the Department granted Jiheng Chemical’s claimed by-product offsets in the original investigation. However, since then, the Department has changed its standard questionnaire to include a separate variable for claimed by-product offsets, and has also clarified its practice in granting such offsets. In *Lined Paper Products* 9/8/2006 at Comment 23, the Department clearly articulated its position: “The mere fact that a company demonstrates that it sold scrap has been rejected by the Department in the past as a justification for allowing a scrap offset.” The Department added that in order to be able to grant an offset, “it is the Department’s practice to require that respondents provide sufficient documentation of the actual {by-product} produced and the amount of the {by-product} reintroduced into the production process.”

As explained above, Jiheng Chemical is not eligible for the claimed offsets because we have determined that the claimed by-product offsets are from costs not attributed to the production of subject merchandise. Had we found otherwise, and determined that the claimed by-product offsets were from costs attributed to the production of subject merchandise, we would still be unable to allow the offset in this segment of the proceeding, however, because Jiheng Chemical failed to provide documentation of the actual amount of the by-products generated from the production of subject merchandise.

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<sup>77</sup> See Second Supplemental Questionnaire issued by the Department on March 6, 2007. Question D-15 instructed Jiheng Chemical to “Provide documentation to support your claimed quantities of recovered by-products.”

<sup>78</sup> See Fourth Supplemental Questionnaire issued by the Department on May 17, 2007, at Question D-8.

<sup>79</sup> See Jiheng Chemical’s June 8, 2007 response to the fourth supplemental questionnaire at FSR-24.

<sup>80</sup> It is the Department’s practice to grant by-product offsets where the respondent can demonstrate that the by-products are generated as a result of production of subject merchandise. (*See, e.g., Malleable Iron Pipe Fittings* 6/29/2006 at Comment 4.) The questionnaire sent to Jiheng Chemical for this review instructed the respondent to “report the amount of by-products or co-products produced per unit of merchandise under consideration.” See August 15, 2006 questionnaire issued to Jiheng Chemical.

#### **Comment 16: Inclusion of Reimbursement for Certain Materials in U.S. Price**

Jiheng Chemical states that the Department made a ministerial error in the calculation of the U.S. net price when it failed to account for the revenue received from its U.S. customer as reimbursement for certain materials. Jiheng Chemical claims that it identified the reimbursement items in the database and demonstrated in its second supplemental questionnaire response that these materials were invoiced separately, and that the values included in the database were calculated on an invoice-specific basis. Jiheng Chemical noted that normal value calculation included values for all of the materials in question, but they must also be included as an adjustment in the U.S. price calculation because they are not otherwise reflected in the sale price of the subject merchandise.

No other party commented on this issue.

#### **Department's Position**

We agree with Jiheng Chemical that we should adjust the gross unit price to account for the materials for which Jiheng Chemical was reimbursed by its U.S. customer in order for the net U.S. price to reflect the same product as the normal value. We have corrected this error for the final results.

#### **Comment 17: Correct Treatment of a Raw Material not Provided Free of Charge**

Jiheng Chemical alleges that when the Department adjusted the gross unit price to account for certain materials that were provided free of charge by a U.S. customer, the Department incorrectly included a value for a material that is not among the materials provided to Jiheng Chemical free of charge. Jiheng Chemical states that this material is purchased domestically and was among materials for which Jiheng Chemical was reimbursed by a U.S. customer. Jiheng Chemical explains that, to correct this error, the Department should exclude this item from the materials provided free of charge and include it among the items for which Jiheng Chemical was reimbursed by the customer, as appropriate (*see* Comment 16, above).

No other party commented on this issue.

#### **Department's Position**

We agree with Jiheng Chemical and have corrected the calculation of U.S. price to properly account for this material. We have excluded it from the materials provided free of charge and included it, where appropriate, among the materials for which Jiheng Chemical was reimbursed by its U.S. customer. Due to the proprietary nature of the information under discussion, *see* Jiheng Chemical's analysis memo for further details.

## Comment 18: Zeroing Methodology

Jiheng Chemical contends that the Department failed to adjust for the negative margins of dumping when calculating its average margin of dumping, citing *U.S.-Zeroing (EC)*. According to Jiheng Chemical, rather than considering the individual results of sales that were found not to be dumped, the Department set the negative values to zero, thereby overstating the dumping margin by not calculating an “average.” Jiheng Chemical requests that the Department eliminate its zeroing methodology and calculate a true average dumping margin for the final results.

Petitioners and BioLab counter that the Department should continue to follow its practice of zeroing negative margins in calculating the final weighted-average margins. According to Petitioners and BioLab, the CAFC has refused to overturn the Department’s “zeroing practice based on any ruling by the WTO or other international body unless and until such ruling has been adopted pursuant to the specified statutory scheme.”<sup>81</sup> Further, BioLab asserts that the Department should reject Jiheng Chemical’s arguments for the same reasons recently discussed in *Brake Rotors* 8/2/2007.

### Department’s Position

Section 771(35)(A) of the Act defines “dumping margin” as the “amount by which the normal value *exceeds* the export price or constructed export price of the subject merchandise” (emphasis added). Outside the context of antidumping investigations involving average-to-average comparisons, the Department interprets this statutory definition to mean that a dumping margin exists only when normal value is greater than export or constructed export price. As no dumping margins exist with respect to sales where normal value is equal to or less than export or constructed export price, the Department will not permit these non-dumped sales to offset the amount of dumping found with respect to other sales. The CAFC has held that this is a reasonable interpretation of the statute.<sup>82</sup> We note we have taken action with respect to two WTO dispute settlement reports which found the denial of offsets to be inconsistent with the Antidumping Agreement: *U.S. - Zeroing (EC)* and *U.S. - Zeroing (Japan)*.

With respect to *US - Zeroing (EC)*, the Department recently modified its calculation of the weighted-average dumping margin when using average-to-average comparisons in antidumping investigations.<sup>83</sup> In doing so, the Department declined to adopt any other modifications concerning any other methodology or type of proceeding, such as administrative reviews.<sup>84</sup> With respect to the specific administrative reviews at issue in that dispute, the United States did not

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<sup>81</sup> Petitioners and BioLab cite *Corus Staal* 2005.

<sup>82</sup> See *Timken* 2004, *Koyo Seiko* 2004, and *Corus Staal* 2005.

<sup>83</sup> See *DOC Zeroing* at 77725.

<sup>84</sup> See *DOC Zeroing* at 77724.

apply any change in its calculation methodology in those administrative reviews to render those determinations consistent with the findings contained in the WTO report.

As such, the Appellate Body's reports in *U.S. - Zeroing (EC)* have no bearing on whether the Department's denial of offsets in this administrative determination is consistent with U.S. law.<sup>85</sup> Accordingly, the Department will continue in this case to deny offsets to dumping based on export transactions that exceed normal value. With respect to *US - Zeroing (Japan)*, Congress has adopted an explicit statutory scheme for addressing the implementation of WTO dispute settlement reports.<sup>86</sup> As is clear from the discretionary nature of that scheme, Congress did not intend for WTO dispute settlement reports to automatically trump the exercise of the Department's discretion in applying the statute.<sup>87</sup> Because no change has been made with respect to the issue of zeroing in administrative reviews, the Department will continue with its current approach to calculating and assessing antidumping duties in this administrative review.<sup>88</sup> For the reasons set forth above, we have not changed the methodology employed in calculating the weighted-average dumping margins for these final results.

## Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of this review and the final weighted-average dumping margins for the reviewed firms in the *Federal Register*.

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Agree

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Disagree

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David M. Spooner  
Assistant Secretary  
for Import Administration

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<sup>85</sup> See *Corus Staal 2005*, at 1347-49; *Timken 2004*.

<sup>86</sup> See 19 U.S.C. § 3538.

<sup>87</sup> See 19 U.S.C. § 3538(b)(4): (implementation of WTO reports is discretionary); see also the Statement of Administrative Action on the Uruguay Round Agreements Act at 354: (“{a}fter considering the views of the Committees and the agencies, the Trade Representative may require the agencies to make a new determination that is not inconsistent with the panel or Appellate Body recommendations. . .”).

<sup>88</sup> See *Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands; Final Results of Antidumping Duty Administrative Review*, 72 FR 28676, 28678 (May 22, 2007).

Date

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